

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

C-1
12/17/19

UNITED STATES OF AMERICA

v.

KENNETH CRAWFORD, JR.

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Crim. No. 18-505

Hon. Robert B. Kugler

FINAL JURY INSTRUCTIONS

**JOINT
EXHIBIT**

C-1

instant messaging service, any Internet chat room, blog, or website such as Facebook, Instagram, LinkedIn, YouTube, or Twitter, to communicate to anyone or share any information about this case or to conduct any research about this case until I accept your verdict. In other words, you cannot talk to anyone on the phone, correspond with anyone, or electronically communicate with anyone about this case. You can only discuss the case in the jury room with your fellow jurors during deliberations.

You may not use these electronic means to investigate or communicate about the case because it is important that you decide this case based solely on the evidence presented in this courtroom. You are only permitted to discuss the case with your fellow jurors during deliberations because they have seen and heard the same evidence you have. In our judicial system, it is important that you are not influenced by anything or anyone outside of this courtroom.

Perform these duties fairly and impartially. Do not allow sympathy, prejudice, fear, or public opinion to influence you. You should also not be influenced by any person's race, color, religion, national ancestry, or gender, sexual orientation, profession, occupation, celebrity, economic circumstances, or position in life or in the community.

2. Evidence

You must make your decision in this case based only on the evidence that you saw and heard in the courtroom. Do not let rumors, suspicions, or anything else that you may have seen or heard outside of court influence your decision in any way.

conferences you may have overheard. When I overruled an objection, the question was answered or the exhibit was received as evidence, and you should treat that testimony or exhibit like any other. When I allowed evidence for a limited purpose only, I instructed you to consider that evidence only for that limited purpose and you must do that.

When I sustained an objection, the question was not answered or the exhibit was not received as evidence. You must disregard the question or the exhibit entirely. Do not think about or guess what the witness might have said in answer to the question; do not think about or guess what the exhibit might have shown. Sometimes a witness may have already answered before anyone objected or before I ruled on the objection. If that happened and if I sustained the objection, you must disregard the answer that was given.

Also, if I ordered that some testimony or other evidence be stricken or removed from the record, you must disregard that evidence. When you are deciding this case, you must not consider or be influenced in any way by the testimony or other evidence that I told you to disregard.

Although the lawyers and Mr. Crawford may have called your attention to certain facts or factual conclusions that they thought were important, what they said is not evidence and is not binding on you. It is your own recollection and interpretation of the evidence that controls your decision in this case. Also, do not assume from anything I may have done or said during the trial that I have any opinion about any of the issues in this case or about what your verdict should be.

inferences you will draw based on all the evidence and your reason, experience, and common sense.

You should consider all the evidence that is presented in this trial, direct and circumstantial. The law makes no distinction between the weight that you should give to either direct or circumstantial evidence. It is for you to decide how much weight to give any evidence.

4. Credibility of Witnesses

As I stated in my preliminary instructions at the beginning of the trial, in deciding what the facts are you must decide what testimony you believe and what testimony you do not believe. You are the sole judges of the credibility of the witnesses. Credibility refers to whether a witness is worthy of belief: Was the witness truthful? Was the witness's testimony accurate? You may believe everything a witness says, or only part of it, or none of it.

You may decide whether to believe a witness based on his or her behavior and manner of testifying, the explanations the witness gave, and all the other evidence in the case, just as you would in any important matter where you are trying to decide if a person is truthful, straightforward, and accurate in his or her recollection. In deciding the question of credibility, remember to use your common sense, your good judgment, and your experience.

In deciding what to believe, you may consider a number of factors:

- (1) The opportunity and ability of the witness to see or hear or know the things about which the witness testified;
- (2) The quality of the witness's knowledge, understanding, and memory;

After you make your own judgment about the believability of a witness, you can then attach to that witness's testimony the importance or weight that you think it deserves.

The weight of the evidence to prove a fact does not necessarily depend on the number of witnesses who testified or the quantity of evidence that was presented. What is more important than numbers or quantity is how believable the witnesses were, and how much weight you think their testimony deserves.

5. Not All Evidence; Not All Witnesses

Although the Government is required to prove the Defendant guilty beyond a reasonable doubt, the Government is not required to present all possible evidence related to the case or to produce all possible witnesses who might have some knowledge about the facts of the case.

In this case, Mr. Crawford is not required to present any or all possible evidence related to the case or to produce any or all possible witnesses who might have some knowledge about the facts of the case. The law never imposes upon the defendant in a criminal case the burden of producing or calling any witnesses or producing any evidence.

6. Interviews by United States Lawyers and Agents

During the trial, you have heard testimony that the attorneys or their agents or investigators have interviewed or attempted to interview some witnesses who testified at trial. No adverse inference should be drawn from that conduct. Indeed, the attorneys had a right, duty, and obligation to conduct and

it such weight as you feel it deserves, but only for the limited purpose that I described to you.

The defendant is not on trial for committing these other acts. You may not consider the evidence of these other acts as a substitute for proof that the defendant committed the crimes charged. You may not consider this evidence as proof that the defendant has a bad character or any propensity to commit crimes. Specifically, you may not use this evidence to conclude that because the defendant may have committed the other act, he must also have committed the acts charged in the indictment.

Remember that the defendant is on trial here only for conspiracy to defraud the United States, for making and presenting false, fictitious, or fraudulent claims to a department of the United States, and for obstructing or impeding the due administration of the internal revenue laws. He is not on trial for these other acts. Do not return a guilty verdict unless the government proves the crimes charged in the indictment beyond a reasonable doubt.

8. Presumption of Innocence; Burden of Proof; Reasonable Doubt

The Defendant, Kenneth Crawford Jr., pleaded not guilty to the offenses charged. Mr. Crawford is presumed to be innocent. He started the trial with a clean slate, with no evidence against him. The presumption of innocence stays with Mr. Crawford unless and until the Government has presented evidence that overcomes that presumption by convincing you that Mr. Crawford is guilty of the offense charged beyond a reasonable doubt. The presumption of innocence

if you have a reasonable doubt about one or more of the elements of the offense charged, then you must return a verdict of not guilty for that offense.

9. Pro Se Defendant

Every defendant has the constitutional right to represent himself if he so chooses. Kenneth Crawford Jr. has chosen to exercise that right. His decision has no bearing on whether he is guilty or not guilty, and it must not affect your consideration of the case. You are not to draw any inference unfavorable to the defendant from the exercise of his right to represent himself.

I want to remind you that when Mr. Crawford made his opening statement, asked questions of witnesses, made objections, and argued legal issues to the Court, he was acting as a lawyer in this case. His words during those parts of the trial are not evidence. The only evidence in this case comes from witnesses who testify under oath on the witness stand and from exhibits that are admitted.

10. Defendant's Choice Not to Testify or Present Evidence

Kenneth Crawford Jr. did not testify in this case. A defendant has an absolute constitutional right not to testify (or to present any evidence). The burden of proof remains with the prosecution throughout the entire trial and never shifts to the defendant. The defendant is never required to prove that he is innocent. You must not attach any significance to the fact that Mr. Crawford did not testify. You must not draw any adverse inference against him because he did not take the witness stand. Do not consider, for any reason at all, the fact that

Count One of the indictment charges that from in or about February 2015 through in or about May 2016, in the District of New Jersey and elsewhere, Kenneth Crawford Jr. agreed or conspired with one or more other persons to defraud the United States and that, to further the objective of the conspiracy, one member of the conspiracy committed at least one overt act, as alleged in the indictment.

It is a federal crime for two or more persons to conspire or agree to defraud the United States or any of its agencies, even if they never actually achieve their objective. A conspiracy is a kind of criminal partnership.

In order for you to find Mr. Crawford guilty of conspiracy to defraud the United States, you must find that the government proved beyond a reasonable doubt each of the following four elements:

First: That two or more persons agreed “to defraud the United States,” as charged in the indictment. To “defraud the United States” means to cheat the United States government or any of its agencies out of money or property. It also means to obstruct or interfere with one of the United States government’s lawful functions, by deceit, craft, trickery, or dishonest means;

Second: That Kenneth Crawford Jr. was a party to or member of that agreement;

Third: That Kenneth Crawford Jr. joined the agreement or conspiracy knowing of its objective to defraud the United States and intending to join together with at least one other conspirator to achieve that objective; that is, that Mr. Crawford and at least one other alleged conspirator shared a unity of purpose

some type of agreement, mutual understanding, or meeting of the minds to try to accomplish a common and unlawful objective.

You may consider both direct evidence and circumstantial evidence in deciding whether the government has proven beyond a reasonable doubt that an agreement or mutual understanding existed. You may find the existence of a conspiracy based on reasonable inferences drawn from the actions and statements of the alleged members of the conspiracy, from the circumstances surrounding the scheme, and from evidence of related facts and circumstances which prove that the activities of the participants in a criminal venture could not have been carried out except as the result of a preconceived agreement, scheme, or understanding.

15. Conspiracy – Membership in the Agreement

If you find that a criminal agreement or conspiracy existed, then in order to find Kenneth Crawford Jr. guilty of conspiracy you must also find that the government proved beyond a reasonable doubt that Mr. Crawford knowingly and intentionally joined that agreement or conspiracy during its existence. The government must prove that Mr. Crawford knew the goal or objective of the agreement or conspiracy and voluntarily joined it during its existence, intending to achieve the common goal or objective and to work together with the other alleged conspirators toward that goal or objective.

The government need not prove that Kenneth Crawford Jr. knew everything about the conspiracy or that he knew everyone involved in it, or that

With regard to the fourth element of conspiracy – overt acts – the government must prove beyond a reasonable doubt that during the existence of the conspiracy at least one member of the conspiracy performed at least one of the overt acts described in the indictment, for the purpose of furthering or helping to achieve the objective of the conspiracy.

The indictment alleges certain overt acts. The government does not have to prove that all of these acts were committed or that any of these acts were themselves illegal. Also, the government does not have to prove that Kenneth Crawford Jr. personally committed any of the overt acts. The government must prove beyond a reasonable doubt that at least one member of the conspiracy committed at least one of the overt acts alleged in the indictment and committed it during the time that the conspiracy existed, for the purpose of furthering or helping to achieve the objective of the conspiracy. You must unanimously agree on the overt act that was committed.

18. Conspiracy – Success Immaterial

The government is not required to prove that any of the members of the conspiracy were successful in achieving any or all of the objectives of the conspiracy. You may find Kenneth Crawford Jr. guilty of conspiracy if you find that the government proved beyond a reasonable doubt the elements I have explained, even if you find that the government did not prove that any of the conspirators actually defrauded the United States.

The term “department,” as used in these instructions, means one of the executive departments of the government, including the Department of the Treasury.

The term “agency,” as used in these instructions, includes any independent establishment, commission, administration, authority, board or bureau of the United States, including the Internal Revenue Service.

To sustain its burden regarding the making or presenting a claim to an “agency” of the government, it is not necessary for the prosecution to prove that the defendant made or presented the claim directly to the agency in question, so long as it was reasonably foreseeable that the claim would eventually be filed with an agency

22. “Claim” – Defined

A “claim,” as that word is used in these instructions, is a demand for money, credit, or reimbursement. A tax return claiming a tax refund is a claim against the United States.

23. “False, Fictitious, or Fraudulent” – Defined

A “false” or “fictitious” claim is one which is untrue when made or when used and which is known by the person making it or using it to be untrue.

A “fraudulent” claim is one which is known to be materially untrue and which is made or used with the intent to deceive.

24. “Material” – Defined

Second: That Kenneth Crawford had the mental state required for the offense that he caused the other person to commit. In this case that means the government must prove beyond a reasonable doubt that Kenneth Crawford Jr. knew that the claims he caused others to file were false, fictitious, or fraudulent;

Third: That Kenneth Crawford Jr. willfully caused the clients identified in Counts 2 through 9 of the Indictment to commit the acts constituting the crime of making or presenting false, fictitious, or fraudulent claims. In this case that means the government must prove beyond a reasonable doubt that Kenneth Crawford Jr. willfully caused others to make or present a false, fictitious, or fraudulent claim to the IRS. To find that Mr. Crawford "caused" this other person to commit those acts, you must find that the government proved beyond a reasonable doubt that Mr. Crawford brought about those acts.

As I stated, the government must prove beyond a reasonable doubt that the clients identified in Counts 2 through 9 of the Indictment committed the acts constituting the offense. However, it is not necessary for you to find that those clients is themselves are guilty of the offense as a matter of criminal law. For example, there may be a situation in which a person commits all of the acts which comprise a federal crime, but is not responsible for the crime because of, for example, mental impairment or youth, or is not guilty of the crime because he or she acted innocently, and did not have the mental state required to commit that crime.

Nevertheless, Mr. Crawford may be guilty of causing that crime, under the instructions I have given to you, where Mr. Crawford did intend that the crime

those no matter how sincerely they are held. It is the duty of every person to obey the law.

27. Willful Blindness

The element of knowledge on the part of the defendant may be satisfied by inferences drawn from proof that the defendant closed his eyes to what would otherwise have been obvious to the defendant. A finding beyond a reasonable doubt of a conscious purpose by the defendant to avoid knowledge that the tax returns at issue were false, fictitious, or fraudulent as to a material matter would permit an inference that he had such knowledge.

Stated another way, the defendant's knowledge of a fact or circumstance may be inferred from his willful blindness to the existence of that fact and circumstance.

No one can avoid responsibility for a crime by deliberately ignoring what is obvious. Thus, you may find that the defendant knew that the tax returns at issue were false, fictitious, or fraudulent as to a material fact based on evidence that you find exists that proves beyond a reasonable doubt that the defendant was aware of a high probability that the tax returns at issue were false, fictitious, or fraudulent; and two, that defendant consciously and deliberately tried to avoid learning about this fact or circumstance.

28. Interfering with the Internal Revenue Laws – Elements

Count 11 charges Kenneth Crawford Jr. with corruptly trying to obstruct or impede the administration of the Internal Revenue laws. It is against federal

The government must prove a “nexus” between the defendant’s obstructive conduct and the particular tax-related proceeding or administrative action. To prove a nexus, there must be a relationship in time, causation, or logic between an alleged obstructive act and the tax-related action or proceeding.

The act need not be criminal in character. An act, even if lawful in-and-of-itself, can serve as a corrupt act if it is done with the requisite intent.

In sum, the government must prove that the defendant deliberately engaged in an act intended to corruptly obstruct or impede a known pending, or reasonably foreseeable, tax-related proceeding or administrative action.

29. Separate Consideration

Kenneth Crawford Jr. is charged with one count of conspiracy to defraud the United States, nine counts of making or presenting false, fictitious, or fraudulent claims to a department of the United States, and one count of obstructing or impeding the due administration of the internal revenue laws; each offense is charged in a separate count of the indictment.

The number of offenses charged is not evidence of guilt, and this should not influence your decision in any way. You must separately consider the evidence that relates to each offense, and you must return a separate verdict for each offense. For each offense charged, you must decide whether the government has proven beyond a reasonable doubt that the defendant is guilty of that particular offense.

Fourth: As I have said before, your verdict must be based only on the evidence received in this case and the law I have given to you. You should not take anything I may have said or done during trial as indicating what I think of the evidence or what I think your verdict should be. What the verdict should be is the exclusive responsibility of the jury.

Fifth: Now that all the evidence is in, and when the arguments are completed, and once I have finished all the instructions, you will be free to talk about the case in the jury room. In fact, it is your duty to talk with each other about the evidence, and to make every reasonable effort you can to reach unanimous agreement. Talk with each other, listen carefully and respectfully to each other's views, and keep an open mind as you listen to what your fellow jurors have to say. Do not hesitate to change your mind if you are convinced that other jurors are right and that your original position was wrong. But do not ever change your mind just because other jurors see things differently, or just to get the case over with. In the end, your vote must be exactly that – your own vote. It is important for you to reach unanimous agreement, but only if you can do so honestly and in good conscience. Listen carefully to what the other jurors have to say, and then decide for yourself if the Government has proven the Defendant guilty beyond a reasonable doubt.

No one will be allowed to hear your discussions in the jury room, and no record will be made of what you say. You should all feel free to speak your minds.

Remember, if you elected to take notes during the trial, your notes should be used only as memory aids. You should not give your notes greater weight than

31. Verdict Form

A verdict form has been prepared that you should use to record your verdicts.

Take this form with you to the jury room. When you have reached your unanimous verdict, the spokesperson should write the verdict on the form, date and sign it, return it to the courtroom and give the form to me. If you decide that the Government has proven Kenneth Crawford Jr. guilty of the offenses charged beyond a reasonable doubt, say so by having your spokesperson mark the appropriate place on the form. If you decide that the Government has not proven Mr. Crawford guilty of some or all of the offenses charged beyond a reasonable doubt, say so by having your spokesperson mark the appropriate place on the form.

32. Conclusion

Now, ladies and gentlemen, I have concluded my instructions and it is time to begin your deliberations. You may have noticed whenever you left or entered the courtroom, everyone stood. We do that for a very important reason, and that is to convey to each of you that, together, you are the judges in this case. By standing, we accord you the respect to which you, as jurors, are entitled. I am confident that you will live up to our expectations and deliberate with all the care that justice requires and both parties deserve.